APPENDIX.

Article I, Section 26, California Constitution.

Text.

Sales and Rentals of Residential Real Property

Neither the State nor any subdivision or agency thereof shall deny, limit or abridge, directly or indirectly, the right of any person, who is willing or desires to sell, lease or rent any part or all of his real property, to decline to sell, lease or rent such property to such person or persons as he, in his absolute discretion, chooses.

"Person" includes individuals, partnerships, corporations and other legal entities and their agents or representatives but does not include the State or any subdivision thereof with respect to the sale, lease or rental of property owned by it.

"Real property" consists of any interest in real property of any kind or quality, present or future, irrespective of how obtained or financed, which is used, designed, constructed, zoned or otherwise devoted to or limited for residential purposes whether as a single family dwelling or as a dwelling for two or more persons or families living together or independently of each other.

This Article shall not apply to the obtaining of property by eminent domain pursuant to Article I, Sections 14 and 14½ of this Constitution, nor to the renting or providing of any accommodations for lodging purposes by a hotel, motel or other similar public place engaged in furnishing lodging to transient guests.

If any part or provision of this Article, or the application thereof to any person or circumstances, is held invalid, the remainder of the Article, including the ap-

plication of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end the provisions of this Article are severable. [*New section adopted November 3, 1964*]

Ballot Arguments.

SALES AND RENTALS OF RESIDENTIAL REAL PROPERTY. Initiative Constitutional Amendment. Prohibits State, subdivision, or agency thereof from denying, limiting, or abridging right of any person to decline to sell, lease, or rent residential real property to any person as he chooses. Prohibition not applicable to property owned by State or its subdivisions; property acquired by eminent domain; or transient lodging accommodations by hotels, motels and similar public places.

Analysis by the Legislative Counsel

This measure would add Section 26 to Article I of the California Constitution. It would prohibit the State and its subdivisions and agencies from directly or indirectly denying, limiting, or abridging the right of any "person" to decline to sell, lease, or rent residential "real property" to such person or persons as he, in his absolute discretion, chooses.

By definitions contained in the measure, "persons" would include individuals, partnerships, corporations and other legal entities, and their agents or representatives, but would not include the State or any of its subdivisions with respect to the sale, lease, or rental of property

owned by it. "Real property" would mean any residential realty, regardless of how obtained or financed and regardless of whether such realty consists of a single family dwelling or as a dwelling for two or more persons or families living together or independently of each other.

The measure would not apply to the obtaining of property by eminent domain, nor to the renting or providing of any transient lodging accommodations by a hotel, motel, or other similar public place engaged in furnishing lodging to transient guests.

Argument in Favor of Proposition No. 14

Your "Yes" vote on this constitutional amendment will guarantee the right of all home apartment owners to choose buyers and renters of their property as they wish, without interference by State or local government.

Most owners of such property in California lost this right through the Rumford Act of 1963. It says they may not refuse to sell or rent their property to anyone for reasons of race, color, religion, national origin, or ancestry.

The Rumford Act establishes a new principle in our law—that State appointed bureaucrats may force you, over your objections, to deal concerning your own property with the person they choose. This amounts to seizure of private property.

Your "Yes" vote will require the State to remain neutral: Neither to forbid nor to force a home or apartment owner to sell or rent to one particular person over another.

Under the Rumford Act, any person refused by a property owner may charge discrimination. The owner

must defend himself, not because he refused, but for his reason for refusing. He must defend himself for alleged unlawful thoughts.

A politically appointed commission (Fair Employment Practices Commission) becomes investigator, prosecutor, jury and judge. It may "obtain . . . and utilize the services of all governmental departments and agencies" against you. It allows hearsay and opinion evidence.

If you cannot prove yourself innocent, you can be forced to accept your accuser as buyer or tenant or pay him up to $500 "damages."

You may appeal to a court, but the judge only reviews the FEPC record. If you don't abide by the decision, you may be jailed for contempt. You are never allowed a jury trial.

If such legislation is proper, what is to prevent the legislature from passing laws prohibiting property owners from declining to rent or sell for reasons of sex, age, marital status, or lack of financial responsibility?

Your "Yes" vote will prevent such tyranny. It will restore to the home or apartment owner, whatever his skin color, religion, or other characteristic, the right to sell or rent his property as he chooses. It will put this right into the California constitution, where it can be taken away only by consent of the people at the polls.

The amendment does not affect the enforceability of contracts voluntarily entered into. A voluntary agreement not to discriminate will be as enforceable as any other. Contrary to what some say, the amendment does not interfere with the right of the State or Federal government to enforce contracts made with private par-

ties. This would include Federal Urban Renewal projects, College Housing programs, and property owned by the State or acquired by condemnation.

Opponents of this amendment show a complete lack of confidence in the fairness of Californians in dealing with members of minority groups. They believe, therefore, the people must not be allowed to make their own decisions.

Your "Yes" vote will end such interference. It will be a vote for freedom.

Submitted by:

L. H. WILSON
Fresno, California
Chairman, Committee
for Home Protection

JACK SCHRADE
State Senator
San Diego County

ROBERT L. SNELL
Oakland, California
President, California
Apartment Owners
Association

Argument Against Proposition No. 14

Leaders of every religious faith urge a "NO" vote on Proposition 14.

Leaders of both the Republican and Democratic parties urge a "NO" vote on Proposition 14.

Business, labor and civic leaders urge a "NO" vote on Proposition 14.

Why such overwhelming opposition? Because Proposition 14 would write hate and bigotry into the Constitution. It could take away your right to buy or rent the home of your choice.

The evidence is clear:

1. *Proposition 14 is a deception.* It does not give you a chance to vote for or against California's Fair Housing Law. Instead, it would radically change our Constitution by destroying all existing fair housing laws. But more than that, it would forever forbid your elected officials of the state, cities and counties from any future action in this field. It would also threaten all other laws protecting the value of our properties.

2. *Proposition 14 says one thing but means another.* Its real purpose—to deny millions of Californians the right to buy a home—is deliberately hidden in its tricky language. Its wording is so sweeping it could result in persons of any group being denied the right to own property which they could afford.

3. *Proposition 14 is not legally sound.* California's Supreme Court already has said there are "grave" doubts as to its constitutionality. It destroys basic rights of indivlduals and thus is in violation of the U.S. Constitution.

4. *Proposition 14 is misleading.* California already has a fair and moderate housing law similar to those in effect in 10 other states. In five years the Fair Employment Practice Commission, which administers this law, has dealt with over 3,500 cases in both employment and housing. *All but four cases were either dismissed or settled in the calm give-and-take of conciliation.*

5. *Proposition 14 is a threat.* It would strike a damaging blow to California's economy through loss of $276,000,000 in federal redevelopment and other construction funds. Thousands of Californians could be thrown out of work.

6. *Proposition 14 is immoral.* It would legalize and incite bigotry. At a time when our nation is moving ahead on civil rights, it proposes to convert California into another Mississippi or Alabama and to create an atmosphere for violence and hate.

For generations Californians have fought *for* a tolerant society and *against* the extremist forces of the ultra-right who actively are behind Proposition 14.

Now a selfish, mistaken group would restrict free trade in real estate in California—a powerful lobby seeking special immunity from the law for its own private purposes is asking you to vote hatred and bigotry into our State Constitution.

Do not be deceived. Join the leaders of our churches, our political parties and business and labor in voting "NO" on Proposition 14. Before you vote study! Learn why you should join us!!

REVEREND
DR. MYRON C. COLE
President, Council of Churches
in Southern California

MOST REVEREND
HUGH A. DONOHOE
Bishop, Catholic Diocese of
Stockton

STANLEY MOSK
Attorney General of California

Material Portions of Section 1, Article IV, California Constitution.

Legislative Power Vested in Senate and Assembly.

SECTION 1. The legislative power of this State shall be vested in a Senate and Assembly which shall be designated "The Legislature of the State of California," but the people reserve to themselves the power to propose laws and amendments to the Constitution, and to adopt or reject the same, at the polls independent of the Legislature, and also reserve the power, at their own option, to so adopt or reject any act, or section or part of any act, passed by the Legislature.

California Civil Code Sections 51, 52 (California Civil Rights Law, as Amended in 1959 — the Unruh Act).

California Civil Code §51

This section shall be known, and may be cited, as the Unruh Civil Rights Act.

All ~~citizens~~ *persons** within the jurisdiction of this ~~state~~ *State are free and equal, and no matter what their race, color, religion, ancestry or national origin* are entitled to the full and equal accommodations, advantages, facilities, ~~and~~ privileges, of ~~inns, restaurants, hotels, eating houses, places where ice cream or soft drinks of any kind are sold for consumption on the premises, barber shops, bathhouses, theaters, skating rinks, public conveyances and all other places of public accommodation or amusement, subject only to the conditions and limitations established by law, and applicable to all citizens.~~ *or services in all business establishments of every kind whatsoever.*

This section shall not be construed to confer any right or privilege on a person which is conditioned or limited by law or which is applicable alike to persons* of every color, race, religion, ancestry or national origin.*

*1961 amendment, deleted "citizens".

California Civil Code §52

Whoever denies ~~to any citizen, except for reasons applicable alike to every race or color, the full accommodations, advantages, facilities, and privileges enumerated in section fifty one of this code,~~ or who aids, or incites such denial, or whoever makes any discrimination, distinction or restriction on account of color, ~~or~~ race, *religion, ancestry or national origin, contrary to the provisions of Section 51 of this Code,* ~~or except for good cause, applicable alike to citizens of every color or race whatsoever, in respect to the admission of any citizen to, or his treatment in, any inn, hotel, restaurant, eating house, place where ice cream or soft drinks of any kind are sold for consumption on the premises, barber shop, bath house, theater, skating rink, public conveyance, or other public of amusement or accommodation, whether such place is licensed or not, or whoever aids or incites such discrimination, distinction or restriction, for each and every such offense is liable in damages in an amount not less than one hundred dollars, which may be recovered in an action at law brought for that purpose,~~ *is liable for each and every such offense for the actual damages, and two hundred fifty dollars ($250) in addition thereto, suffered by any person denied the rights provided in Section 51 of this Code.*

[California Civil Code §§ 51-52 as amended in 1959.]

California Health and Safety Code Section 35,700 et seq. (Material Portions of California "Fair Housing" Law of 1963—the Rumford Act).

California Health & Safety Code §§ 35700-43—This Act (§35,720) makes it unlawful:

"1. *Owners of publicly assisted multiple dwellings.* For the owner of any publicly assisted housing accommodation which is in, or to be used for, a multiple dwelling, with knowledge of such assistance, to refuse to sell, rent or lease or otherwise to deny to or withhold from any person or group of persons such housing accommodation because of the race, color, religion, national origin, or ancestry of such person or persons.

2. For the owner of any publicly assisted housing accommodation which is in, or to be used for, a multiple dwelling, with knowledge of such assistance, to discriminate against any person because of the race, color, religion, national origin or ancestry of such person in the terms, conditions or privileges of any publicly assisted housing accommodations or in the furnishing of facilities or services in connection therewith.

3. For any owner of any publicly assisted housing accommodation which is in, or to be used for, a multiple dwelling, with knowledge of such assistance, to make or to cause to be made any written or oral inquiry concerning the race, color, religion, national origin or ancestry of a person seeking to purchase, rent or lease any publicly assisted housing accommodation for the purpose of violating any of the provisions of this part.

4. *Owner of publicly assisted single dwelling.* For the owner of any publicly assisted housing accommodation

which is a single family dwelling occupied by the owner, with knowledge of such assistance, to commit any of the acts prohibited by subdivisions 1, 2, and 3.

5. *Owner of dwelling containing more than four units.* For the owner of any dwelling, other than a dwelling containing not more than four units, to commit any of the acts prohibited by subdivisions 1, 2, and 3.

6. *Persons subject to CC § 51.* For any person subject to the provisions of Section 51 of the Civil Code, as that section applies to housing accommodations, as defined in this part, and to transactions relating to sales, rentals, leases; or acquisition of housing accommodations, as defined in this part, to discriminate against any person because of race, color, religion, national origin, or ancestry with reference thereto.

7. *Financial institutions.* For any person, bank, mortgage company or other financial institution to whom application is made for financial assistance for the purchase, organization, or construction of any housing accommodation to discriminate against any person or group of persons because of the race, color, religion, national origin or ancestry of such person or persons, or of prospective occupants or tenants, in the terms, conditions or privileges relating to the obtaining or use of any such financial assistance.

8. *Aiding, abetting, etc.* For any person to aid, abet, incite, compel or coerce the doing of any of the acts or practices declared unlawful in this section, or to attempt to do so."

Other California Antidiscrimination Statutes.

1. Civil Code §69 and Health & Safety Code §10350—Applicants for a marriage license shall not be required to state for any purpose their race.

2. Civil Code §782—Any provision in deed of real property proporting to restrict right to sell, etc. to one race is void.

3. Education Code §8451—No teacher nor entertainments around a school shall reflect in any way upon citizens of the United States because of their race.

4. Education Code §8452—No textbooks, etc. which are adopted shall reflect upon citizens of the United States because of their race.

5. Education Code §13274—Reflects state's policy against persons charged with hiring teachers refusing or failing to do so for reasons of the race of the applicant.

6. Education Code §13732—No questions concerning race shall be asked of any applicant whose name has been certified for appointment for classified positions.

7. Election Code §223—No County Clerk can refuse to deputize any person to register voters because of that person's race.

8. Government Code §19702—No person shall be discriminated against for Civil Service appointment because of race, color, national origin, etc.

9. Government Code §19704—Unlawful to permit any notation to be made on an application or examination for Civil Service indicating the race of any person.

10. Government Code §54091—Any governmental entity which owns, operates or controls beaches shall allow use of them by all persons regardless of color.

11. Government Code §§50260-62—Authorizes counties over 2,000,000 population to establish a commission to develop plans for preserving peace among citizens of all races. Authorizes counties and cities to expend public funds to promote positive human relations.

12. Government Code §8400—Prohibits inclusion of any question relative to an applicant's race to be filled in and submitted by applicant to any board, commission, agents, etc., of this state.

13. Health & Safety Code §33039—State recognizes one of causes of slums is racial discrimination in seeking housing; public policy that this factor will be taken into consideration in any redevelopment program.

14. Health & Safety Code §33050—Policy of State that is undertaking community redevelopment there will be no discrimination because of race.

15. Health & Safety Code §33435—Agencies shall obligate lessees and purchasers of real property acquired in urban renewal to refrain from restricting rental, sales or lease on basis of race. All such deeds or leases shall be submitted to the agency and shall include non-discrimination clauses.

16. Health & Safety Code §33436—Contains the anti-discrimination clauses required to be in the leases, etc.

17. Insurance Code §§11628-29—Insurer cannot refuse to accept application or cancel insurance under conditions less favorable to insured except for reasons applicable to all races, nor charge one race a higher premium.

18. Labor Code §1735—No discrimination made in employment of persons upon public works because of race; contractor violating this is subject to penalties.

19. Labor Code §1777.6—Unlawful for employer or labor union to refuse to accept otherwise qualified employees as indentured apprentices on any public work solely on basis of race.

20. Labor Code §§1410-32—Fair Employment Practice Act. §1411 states that it is the public policy of this state to protect the rights of all persons to seek employment without discrimination.

The Act applies to employers of five or more persons, labor organizations, employment agencies, and to the State or any of its political subdivisions and cities. The Act does not cover social, fraternal, charitable, educational, or religious associations, non-profit corporations, or employers of agricultural and domestic workers. The Act prohibits an employer to refuse to hire or to discharge from employment any persons because of race, or to discriminate in terms of compensation, etc. on such basis. An employer cannot use an application form or make inquiry of the prospective employee which directly or indirectly expresses a limitation based on race. The bill establishes the Fair Employment Practice Commission to administer the Act.

21. Welfare & Institutions Code §§2380-86—State will not approve local plans to promote community activities among old people unless it is available to all older citizens regardless of race.

Majority Opinion of the California Supreme Court.

[Sac. No. 7657. In Bank. June 8, 1966.]

CLIFTON HILL, Plaintiff and Appellant, v. CRAWFORD MILLER, Defendant and Respondent.

[On rehearing after judgment reversed (64 A.C. 598, 50 Cal.Rptr. 908). Judgment of superior court affirmed.]

APPEAL from a judgment of the Superior Court of Sacramento County. William M. Gallagher, Judge. Affirmed.

Action to restrain a landlord from evicting a Negro tenant solely because of his race. Judgment of dismissal after demurrer was sustained without leave to amend affirmed.

Colley & McGhee, Nathaniel S. Colley, Milton L. McGhee, Stanley Malone and Clarence B. Canson for Plaintiff and Appellant.

John F. Duff, Richard G. Logan, Cyril A. Coyle, James S. DeMartini, Thomas Arata, William J. Bush, Peter J. Donnici, James T. McDonald, Richard B. Morris, Richard A. Bancroft, Jack Greenberg, Joseph B. Robison, Sol Rabkin, Robert M. O'Neil, Duane B. Beeson, Seymour Farber, Robert H. Laws, Jr. Howard Nemerovski, John G. Clancy, Ephraim Margolin, George T. Altman and Ray R. McCombs as Amici Curiae on behalf of Plaintiff and Appellant.

Harry A. Ackley, Robert J. Cook and John M. Beede for Defendant and Respondent.

Gibson, Dunn & Crutcher, William French Smith, Samuel O. Pruitt, Jr., and Charles S. Battles, Jr., as Amici Curiae on behalf of Defendant and Respondent.

PEEK, J.—Plaintiff tenant appeals from a judgment for defendant landlord entered upon the sustaining of a demurrer without leave to amend in an action for an injunction to restrain defendant from evicting plaintiff, a Negro, solely because of his race.

[1] It appears from the complaint and is deemed admitted by the demurrer that plaintiff occupies, as a tenant, residential property owned by defendant; that defendant caused to be served upon plaintiff a notice to quit possession and terminate the tenancy; that the notice was given only for the reason that defendant plans to exclude Negroes from the rental of residential real property owned by defendant; that defendant intends to follow the notice with an action for unlawful detainer in the appropriate municipal court; that he asserts he is entitled to discriminate in the rental of his property in reliance on article I, section 26, of the California Constitution;[1] that plaintiff has a right not to be subjected to such discrimination by virtue of the Fourteenth Amendment to the federal Constitution, and that he has no adequate remedy at law by which to preserve his right.

Defendant demurred to the complaint upon the ground that it failed to state sufficient facts to consti-

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[1]The operative portion of article I, section 26, of the California Constitution provides:

"Neither the State nor any subdivision or agency thereof shall deny, limit or abridge, directly or indirectly, the right of any person, who is willing or desires to sell, lease or rent any part or all of his real property, to decline to sell, lease or rent such property to such person or persons as he, in his absolute discretion, chooses."

tute a cause of action. Arguments on the demurrer were heard together with arguments on plaintiff's motion for a preliminary injunction and the merits of the constitutionality of article I, section 26. The demurrer was sustained without leave to amend, and thereafter the instant judgment was entered.

We have concluded in *Mulkey v. Reitman, ante,* p. 529 [50 Cal.Rptr. 881, 413 P.2d 825], that article I, section 26, is an unconstitutional infringement upon the equal protection clause of the Fourteenth Amendment, and for that reason defendant is not entitled to rely upon it as giving him a right to discriminate against plaintiff in the rental of defendant's property. It does not follow from such holding, however, that plaintiff stated a cause of action. To withstand defendant's demurrer he must allege facts which entitle him to relief as a matter of law. This he has failed to do.

The facts which plaintiff has alleged show only that defendant has discriminated and intends to further discriminate against defendant and Negroes generally in the rental of defendant's residential property. The Fourteenth Amendment does not impose upon the state the duty to take positive action to prohibit a private discrimination of the nature alleged here. (*Mulkey v. Reitman, ante,* pp. 529, 536 [50 Cal. Rptr. 881, 413 P.2d 825].)

[2] Although the state, by action of the Legislature or the People, may make such private acts of discrimination unlawful, it has not done so. [3] Section 51 of the Civil Code, commonly known as the Unruh Civil Rights Act, prohibits discrimination only where it occurs in "business establishments of every kind whatsoever." (See *Lee v. O'Hara* (1962) 57 Cal.2d 476

[20 Cal.Rptr. 617, 370 P.2d 321]; *Burks v. Poppy Constr. Co.* (1962) 57 Cal.2d 463 [20 Cal.Rptr. 609, 370 P.2d 313].) [4] The Rumford Fair Housing Act (Health & Saf. Code, §§ 35700-35744) prohibits discrimination only in the sale or rental of public assisted housing accommodations and in any private dwelling containing more than four units. (Health & Saf. Code, §§ 35710, 35720.) Plaintiff has failed to allege facts which would bring him within either the Unruh or Rumford acts, or any other statutory provision. Not only has he failed to state a cause of action, but there is nothing in the record to suggest that he could amend his complaint to so state a cause of action under any statutory provision.

Plaintiff is further unable to plead facts which would afford him relief under any decisional law. His reliance in this connection upon *Abstract Investment Co. v. Hutchinson,* 204 Cal.App.2d 242 [22 Cal.Rptr. 309], is misplaced. In that case it was held that to make available to a discriminating landlord the aid and processes of a court in effecting a discrimination would involve the state in action prohibited by the Fourteenth Amendment.

For the foregoing reasons the judgment is affirmed.

Traynor, C. J., Peters, J., Tobriner, J., and Burke, J., concurred.

WHITE, J.*—For the reasons stated in my dissenting opinion in *Mulkey v. Reitman, ante,* p. 545 [50 Cal. Rptr. 881, 413 P.2d 825], I concur in the judgment.

McComb, J., concurred.

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*Retired Associate Justice of the Supreme Court sitting under assignment by the Chairman of the Judicial Council.